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12 Attorneys for Defendants
13 CITY OF PETALUMA, OFFICER NICK McGOWAN
14 and SGT. JIM STEPHENSON

15 IN THE UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 DAVID W. PIMENTEL,

18 Plaintiff,

v.

19 COUNTY OF SONOMA, CITY OF
20 PETALUMA, OFFICER McGOWAN, POLICE
21 SGT. STEPHENSON, and DOES 1-25,

22 Defendants.

23 Case No: C08-02121 EMC

24 DEFENDANTS CITY OF PETALUMA,
25 OFFICER NICK McGOWAN AND SGT.
JIM STEPHENSON'S ANSWER TO
COMPLAINT AND DEMAND FOR JURY
TRIAL

26 COMES NOW CITY OF PETALUMA, SGT. JIM STEPHENSON, Defendants and
27 PETALUMA POLICE OFFICER NICK McGOWAN, who has incorrectly been sued herein as
28 Sonoma County Sheriff's Deputy, Defendant, all of whom answer Plaintiff's Complaint as follows:

29 1. In answer to paragraph 1 of the Complaint, Defendants admit that David W.
30 Pimentel has alleged causes of action against the County of Sonoma, City of Petaluma, Officer
31 McGowan, and Police Sgt. Stephenson. However, Defendants deny any liability to Plaintiff based
32 on the allegations in the Complaint.

33 2. In answer to paragraph 2 of the Complaint, Defendants admit that the Complaint
34 appears to contain four pages, but deny any liability to Plaintiff based on the content of the
35 Complaint or any allegations therein.

1 3. In answer to paragraph 3 of the Complaint, Defendants have no information or belief
2 concerning the items described therein, and on that ground denies the allegations contained therein.

3 4. In answer to paragraph 4 of the Complaint, Defendants deny the allegations stated
4 therein based on lack of information and belief.

5 5. In answer to paragraph 5, subsection "a.(4)" of the Complaint, Defendants admit that
6 the County of Sonoma is a public entity. In answer to paragraph 5, subsection "b.(4)" of the
7 Complaint, Defendants admit that the City of Petaluma is a public entity.

8 6. In answer to paragraph 6, subsection "a." of the Complaint, Defendants have no
9 information or belief concerning the items described therein, and on that ground deny the
10 allegations contained therein. In answer to paragraph 6, subsection "b." of the Complaint,
11 Defendants have no information or belief concerning the items described therein, and on that
12 ground deny the allegations contained therein.

13 7. In answer to paragraph 7 of the Complaint, Defendants have no information or belief
14 concerning the items described therein, and on that ground deny the allegations contained therein.

15 8. In answer to paragraph 8 of the Complaint, Defendants admit that jurisdiction is
16 proper in the United States District Court, Northern District of California.

17 9. In answer to paragraph 9 of the Complaint, Defendants admit that Plaintiff is
18 required to comply with the applicable claims statute. In answer to paragraph 9, subsection "a." of
19 the Complaint, Defendants deny that Plaintiff has complied with the applicable claims statutes.

20 10. In answer to paragraph 10 of the Complaint, Defendants deny any liability to
21 Plaintiff based on the Assault and Battery allegations in the Complaint. In answer to the
22 Attachment to the Complaint, "Cause of Action – Intentional Tort," Defendants deny the allegations
23 contained therein.

24 11. In answer to paragraph 11 of the Complaint, Defendants deny the allegations
25 contained therein, and deny any liability to Plaintiff based on the allegations in the Complaint.

26 12. In answer to paragraph 13 of the Complaint, Defendants admit that jurisdiction is
27 proper in the United States District Court, Northern District of California.

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13. In answer to paragraph 14 of the Complaint, Defendants deny the allegations contained therein, and deny any liability to Plaintiff based on the allegations in the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants and each of them, at all times, acted in good faith, without malice and within the scope and course of their employment, and under the reasonable belief that their actions were lawful. Accordingly, Defendants and each of them are entitled to qualified immunity herein.

THIRD AFFIRMATIVE DEFENSE

Defendants are immune from liability pursuant to the provisions of California Government Code Sections 820.2 and 815.2.

FOURTH AFFIRMATIVE DEFENSE

Defendants are immune from liability pursuant to the provisions of California Government Code Sections 820.4 and 815.2.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's prayer for exemplary damages is precluded under California Government Code Section 818.

SIXTH AFFIRMATIVE DEFENSE

Defendants are immune from liability pursuant to California Government Code Sections 820.8 and 815.2.

SEVENTH AFFIRMATIVE DEFENSE

Defendants are immune from liability pursuant to California Government Code Sections 821.6 and 815.2.

EIGHTH AFFIRMATIVE DEFENSE

Defendants allege that they had probable cause to believe that their actions toward the Plaintiff were lawful.

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1 **NINTH AFFIRMATIVE DEFENSE**

2 Defendants are immune from the claims contained in Plaintiff's Complaint pursuant to the
3 provisions of California Penal Code Section 835.

4 **TENTH AFFIRMATIVE DEFENSE**

5 Defendants are immune from the claims contained in Plaintiff's Complaint pursuant to the
6 provisions of California Penal Code Section 836.

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 Defendants are immune from the claims contained in Plaintiff's Complaint pursuant to the
9 provisions of California Penal Code Section 836.5.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 Plaintiff's claims against Defendant CITY OF PETALUMA under 42 U.S. C. § 1983 are
12 contrary to law, in that they are founded upon the doctrine of *respondeat superior*. Neither a
13 municipality nor its officers, supervisors, or policymakers can be held liable under 42 U.S.C. § 1983
14 under a *respondeat superior* theory. (*Monell v. Department of Social Services*, 436 U.S. 658, 691
15 (1978).)

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 Defendants are informed and believe and thereby allege that Plaintiff's alleged damages or
18 injuries, if any, were aggravated by the failure of Plaintiff and/or other individuals to use reasonable
19 diligence to mitigate those injuries or damages.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 Defendants allege that Defendants took reasonable precautions with regard to protecting
22 against any risk of injury complained of by Plaintiff.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 Defendants allege that the Plaintiff had the express knowledge of the risks and hazards set
25 forth in the Complaint, as well as the magnitude of the risks and hazards and thereafter knowingly
26 and willingly assumed those risks.

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1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 Defendants allege that Plaintiff has waived his right to maintain the action filed in the
3 Complaint.

4 **SEVENTEENTH AFFIRMATIVE DEFENSE**

5 Defendants allege that Plaintiff is barred by the principal of estoppel from maintaining the
6 action filed in this case.

7 **EIGHTEENTH AFFIRMATIVE DEFENSE**

8 Defendants and each of them allege that they were privileged to detain Plaintiff at the time
9 and place alleged.

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 Defendants allege that Plaintiff is guilty of willful misconduct which contributed to the
12 happening of the incident which resulted in his alleged injuries.

13 **TWENTIETH AFFIRMATIVE DEFENSE**

14 Defendants allege that Plaintiff's claim for punitive damages is barred by the doctrine
15 enunciated in *City of Newport v. Facts Concerts, Inc.*, 453 U.S. 247 (1981).

16 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

17 Defendant alleges that Plaintiff's action is barred to the extent that Plaintiff has failed to
18 comply with Government Code §§ 900, *et seq.* and to the extent that Plaintiff's Complaint exceeds
19 the scope of his claim with respect to both theories of liability and injuries and damages claimed.

20 **PRAYER**

21 WHEREFORE, Defendants pray as follows:

- 22 1. That Plaintiff take nothing by reason of his Complaint and judgment be rendered in
23 favor of Defendants including but not limited to the named Defendants herein;
- 24 2. That Defendants be awarded their costs incurred in the defense of this action; and
- 25 3. For such other relief as the Court deems proper.

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JURY DEMAND

Defendants CITY OF PETALUMA, OFFICER NICK McGOWAN, SGT. JIM STEPHENSON, and each of them hereby demand trial by jury.

Dated: April 29, 2008

Respectfully Submitted,

MEYERS, NAVÉ, RIBACK, SILVER & WILSON

By: _____ /s/ Clifford F. Campbell

**Clifford F. Campbell
Attorneys for Defendants
CITY OF PETALUMA, OFFICER NICK
McGOWAN and SGT. JIM STEPHENSON**

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PROOF OF SERVICE**FRCP RULE 5(b)**

I am employed in the City of Oakland and County of Alameda, California. I am over the age of 18 years and not a party to the within action. My business address is Meyers, Nave, Riback, Silver & Wilson, 555 12th Street, Suite 1500, Oakland, CA 94607.

On April 29, 2008, I served the within:

- **DEFENDANTS CITY OF PETALUMA, OFFICER NICK McGOWAN AND SGT. JIM STEPHENSON'S ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL**

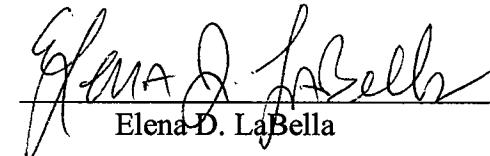
on the parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

David W. Pimentel 1192 Liberty Road Petaluma, CA 94952	Plaintiff in Pro Per Telephone: (707) 769-0127
Bonnie A. Freeman, Esq. SENNEFF, FREEMAN & BLUESTONE 50 Old Courthouse Square, Suite 401 Santa Rosa, CA 95404	Attorneys for Defendant COUNTY OF SONOMA Telephone: 707-526-4250 Facsimile: 707-526-0347

X **(By First-Class Mail)** I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Oakland, California. I am readily familiar with the business practice for collection and processing of mail in this office; and that in the ordinary course of business said document would be deposited with the U.S. Postal Service in Oakland on that same day. I understand that service shall be presumed invalid upon motion of a party served if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED at Oakland, California on April 29, 2008.



Elena D. LaBella